

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Third Periodic Review of the)	MB Docket No. 07-91
Commission's Rules and Policies)	
Affecting the Conversion)	
To Digital Television)	

To: Secretary, FCC

COMMENTS

Sistema Universitario Ana G. Mendez, Inc. ("SUAGM"), by its attorneys, provides these comments in response to the *Notice of Proposed Rulemaking* in the referenced docket, FCC 07-70 (released May 18, 2007) ("*NPRM*").

SUAGM applauds the FCC's determination to have a strong DTV system in place across the country on the February 17, 2009 digital transition deadline, and it fully supports that goal. However, SUAGM strongly urges the FCC to exercise its discretion under the law establishing the transition deadline to provide substantially more flexibility to stations regarding the process and timing of their achieving their "ultimate" or "final" DTV transmission facilities.

Specifically, with respect to SUAGM's noncommercial educational station WMTJ-DT, and as described below, SUAGM urges the FCC to recognize and accommodate the uniquely difficult circumstances that SUAGM has faced in its efforts to construct its new DTV station which, of necessity, has to be located within a national forest.

BACKGROUND

SUAGM is a non-profit 501(c)(3) educational institution. SUAGM operates three higher education institutions in Puerto Rico: Universidad del Este (established in 1949), Universidad Del Turabo (established in 1972), and Universidad Metropolitana (established in 1980). Approximately 38,000 students are enrolled in the institutions. The institutions are deemed “Hispanic Serving” by the U.S. Department of Education -- 100% of enrolled students are Hispanics and at least 75% of those are from low income families.

SUAGM is the licensee of noncommercial educational television stations WMTJ (TV), NTSC Channel *40, DTV Channel *16, Fajardo, and WQTO (TV), NTSC Channel *26, DTV Channel *25, Ponce, Puerto Rico. WMTJ and WQTO provide the only PBS program service available to a substantial portion of the island of Puerto Rico. WMTJ’s signal encompasses a total of 2,609,351 people in the greater San Juan area. WQTO’s signal encompasses a total of 1,211,390 people in the greater Ponce area.

SUAGM has pursued DTV construction resolutely for its FCC-authorized digital facilities, has devoted substantial resources to digital conversion, and is completely committed to a speedy transition to digital broadcasting. Station WQTO-DT in Ponce is licensed and operating with its full, authorized DTV

facilities. However, SUAGM has, until recently, encountered stiff resistance and repeated delays from United States Forest Service personnel at the El Yunque National Forest (formerly called the Caribbean National Forest) for the necessary special use permits to locate the WMTJ-DT antenna at El Yunque Peak, near the existing WMTJ analog antenna.

The El Yunque Peak is a uniquely appropriate site for WMTJ(TV) and WMTJ-DT. Because of the mountainous terrain between the WMTJ city of license on the east coast of Puerto Rico (Fajardo) and the capital and largest metropolitan area of Puerto Rico (San Juan), El Yunque Peak is the only possible location that would permit WMTJ-DT to provide coverage to both these areas and replicate WMTJ(TV) coverage. No other site can accomplish what the FCC has intended for the digital television buildout.

Despite massive effort and expense by SUAGM, the tower approval process has taken far longer than SUAGM could ever have anticipated, and has still not been successfully accomplished, due to the remote nature of the El Yunque Peak site and its special character as a rain forest protected by the US Forest Service. The El Yunque National Forest is the only tropical forest in the US national forest system. Weather at the El Yunque Peak site can be a challenge as it rains nearly every day at some point. The site is remote and access is limited.

SUAGM applied to the FCC for its WMTJ-DT construction permit on April 28, 2000 (in FCC File No. BPEDT-20000428ACK). However, processing of the application was delayed in part because the FCC had not established a coverage

and population base for Puerto Rico stations (because of unavailable terrain and population databases) and thus had no methodology for necessary interference comparisons. To assist with the FCC processing, SUAGM filed an engineering supplement to its pending application on March 5, 2002, and an amendment on July 19, 2002 to decrease the ERP. The FCC granted the WMTJ-DT construction permit on July 29, 2002. In March 2003, SUAGM filed an application for a minor modification of its permit to specify a different antenna because the originally specified antenna is no longer manufactured. This application was not granted by the FCC until almost a year later, in February 2004 in FCC File No. BMPEDT-20030324ACY.

As explained in SUAGM's DTV construction extension requests, circumstances beyond SUAGM's control have prevented the completion of construction. Originally, SUAGM had planned to mount its DTV antenna near their analog antenna on the existing tower at El Yunque Peak owned by the Puerto Rico Telephone Company (PRTC). That solution only required an amendment to the special use permit granted to the PRTC and would have been easily accomplished. However, engineering studies in early 2003 showed the PRTC tower to be overstressed and not in compliance with its own special use permit and concluded that no new antennas could be installed unless and until these structural problems were resolved. Unfortunately, the complicated and self-interest motivated relationship between PRTC and the Forest Service over permit compliance issues at the El Yunque Peak site have made that alternative unworkable.

Thus, without a tower to host the WMTJ-DT antenna, SUAGM on October 1, 2003 initiated an Early Notice request for a special use permit for the construction of a new tower nearby on El Yunque Peak. Forest Service laws and regulations require a two tier, pre-screen process of alternatives analysis before getting Forest Service approval to proceed to a formal application with attendant alternatives analysis and National Environmental Policy Act (NEPA) processes. Unfortunately, from October 1, 2003 to April 19, 2007 the Forest Service sought to leverage SUAGM's urgent need for a tower for WMTJ-DT into a forced resolution of non-compliance issues the Forest Service had with the two existing facilities managers at El Yunque Peak (PRTC and Crown Castle, Inc.). Finally after more than 3 ½ years of delay, the Forest Service on April 19, 2007 gave the necessary approval for SUAGM to proceed with a formal application. SUAGM is now in the process of conducting engineering and environmental alternatives analyses in preparation to submit, later this year, the formal application for the special use permit to build the tower and install the DTV antenna at El Yunque Peak.

Though, SUAGM has begun to make some progress on obtaining approval for the new DTV tower much remains to be done to get final, formal approval and to begin construction. Moreover, the remaining formal process for a special use permit is such that other parties who may have self-interest in developments at El Yunque Peak will have opportunity to pose objections or make demands for conditions on the final approval in ways that may cause further delay. Depending on the results

of the additional studies that must be done the remaining process could take an additional 6 months, possibly longer. In addition to the legal environment, the physical environment for such construction is difficult as previously mentioned.

With the April 19, 2007 approval for SUAGM to submit a formal application for a special use permit to construct a new tower at El Yunque Peak, planning, engineering and design of facilities can and have begun. In order to do all it can to move things along, SUAGM has filed with the FCC an application to modify its WMTJ-DT Construction Permit (File No. BMPEDT-20070629AEN) to specify the new tower facilities. Those facilities, with ERP of 140 kW and HAAT of 852 m, are different from those specified in the Final DTV Table (150 kW ERP and 839 m HAAT), and will need to be accommodated.

However, until the US Forest Service formally issues a special use permit for the new tower, construction simply cannot begin.

As a result of these delays, SUAGM has asked for, and the FCC has granted, several requests for extension of time to construct, most recently in File No. BEPEDT-20050912ACB (extension granted through November 18, 2007).

COMMENTS

I. The FCC should be flexible in the process for and timing of construction of final DTV facilities.

SUAGM pledges to continue to use its best efforts, and devote all necessary resources, to obtaining permission to construct, and actually constructing, the authorized facilities for WMTJ-DT. However, SUAGM strongly urges the FCC to exercise its discretion under the law establishing the February 17, 2009 digital

transition deadline by providing substantial flexibility to stations regarding the process for and timing of their achieving their “ultimate” or “final” DTV transmission facilities. The FCC should continue to grant extensions of time to construct in those very rare circumstances where construction is literally impossible (as here), and there should be no requirement to achieve replication or maximized facilities (or such other facilities specified in the proposed DTV Table of Allotments) by any particular deadline, such as February 17, 2009, and certainly not earlier.

Clearly, the FCC has discretion to show such flexibility with respect to stations achieving their final replicating or maximized DTV facilities. The Digital Television and Public Safety Act of 2005, Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006), established February 17, 2009 as the deadline for the end of analog transmissions by all full power stations, and for the end of analog and digital transmissions on all out-of-core channels, but there is no requirement in the law, or even a suggestion, that the deadline needs to become a deadline as well for final DTV facilities.

SUAGM urges that the FCC should take advantage of the flexibility in the law, by similarly according flexibility to stations to achieve their final DTV facilities at the time and in the manner that they are best able to do so.

For all these reasons, generally, SUAGM urges the FCC to be as flexible as the law allows, focusing on identifying and addressing ways to facilitate a smooth transition in February of 2009, and facilitating each station’s own path and timing in achieving its final DTV facilities.

II. The FCC should not require stations to construct facilities that precisely match the facilities specified in the Table of DTV Allotments.

In paragraph 67 of the *NPRM*, the FCC suggests that all stations' constructed and licensed DTV facilities have to precisely match the facilities specified in the DTV Table of Allotments, and that such final DTV facilities will be constructed by the transition deadline.

As noted above, SUAGM is going to need to construct DTV facilities that are not precisely the same as the facilities specified in the DTV Table. SUAGM therefore urges the FCC to find a way to accommodate SUAGM's needs in this process, either by recognizing that DTV facilities do not need to precisely line up with those specified in the DTV Table, or making changes as necessary in the DTV Table.

CONCLUSION

SUAGM urges the FCC to adopt flexible rules consistent with the comments above.

Respectfully submitted,

**SISTEMA UNIVERSITARIO ANA G.
MENDEZ, INC.**

By: Todd D. Gray
Todd Gray
Margaret Miller
Barry Persh

Its Attorneys

DOW LOHNES PLLC
1200 New Hampshire Ave., N.W.
Suite 800
Washington, DC 20036
(202) 776-2000

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